

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTOINE GAYE,

Defendant.

**8:16CR253**

**ORDER**

On May 5, 2019, this Court denied (Filing Nos. 61 and 62) defendant Antoine Gaye’s (“Gaye”) Motion Pursuant to 28 U.S.C. § 2255 (Filing No. 52). On June 27, 2019, the Court permitted (Filing No. 65) Gaye to proceed in forma pauperis (“IFP”) as to his Notice of Appeal (Filing No. 63) of that denial but failed to determine whether a certificate of appealability should issue. This matter is before the Court on remand from the Eighth Circuit (Filing No. 68) with direction to consider whether a certificate of appealability should be granted in this case. *See Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997).

Rule 11 of the Rules Governing Section 2255 Proceedings requires the Court to issue or deny a certificate of appealability after issuing a final order adverse to an applicant under § 2255. The Court can only issue a certificate of appealability if Gaye “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Gaye must show “that jurists of reason could disagree with the [Court’s] resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

For the reasons stated in this Court’s Memorandum and Order on May 5, 2019, denying Gaye’s Motion Pursuant to 28 U.S.C. § 2255, the Court finds that Gaye has not

“made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Therefore, the Court will not issue a certificate of appealability.

Though the Court will not issue a certificate of appealability, should Gaye apply for a certificate of appealability to the Eighth Circuit, he may continue to proceed in forma pauperis. *See Fed. R. App. P. 24(a)(3).*

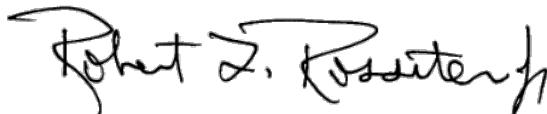
Based on the foregoing,

IT IS ORDERED:

1. A certificate of appealability will not issue in this case.
2. The Clerk of Court shall mail a copy of this order to the United States Court of Appeals for the Eighth Circuit.
3. The Clerk of Court shall mail a copy of this order to Antoine Gaye at the address of record or his current place of incarceration.

Dated this 28th day of June 2019.

BY THE COURT:



Robert F. Rossiter, Jr.  
United States District Judge